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MEMORANDUM

February 26, 2026

SUBJECT: Tax Credits; Federal Income Tax
(HB 152; Work Order No. 34-LS0674A)

TO: Representative Ky Holland
Attn: Mark Lambert

FROM: Emily Nauman 
Director

You set out a hypothetical permanent fund dividend (dividend) disbursement structure and asked several questions about it. You asked these questions in relation to HB 152, a bill that imposes a four percent income tax. Please find the structure and your questions below.

Structure: Rather than being disbursed in cash, you proposed that an eligible individual's dividend is instead deposited into a state "wallet." An individual may then apply the dividend amount against amounts due to the state, including the income tax proposed in HB 152, fees for hunting and fishing licenses, DMV fees, and business filing related fees. Any balance remaining would be paid out to the individual.

Questions

Is the proposed structure legally viable? The concept could be drafted and, to the extent it does not deviate from the current dividend eligibility structure, would likely be upheld by a court.¹

¹ As I'm sure you are aware, the dividend has a long history of associated litigation. In *Zobel v. Williams* the United States Supreme Court found that dispersal scheme that made payments based on the number of years a resident had lived in the state violated the equal protection clause of the Fourteenth Amendment of the Constitution of the United States because it divided citizens "into expanding numbers of permanent classes" (based on years of residency) that could not be rationally justified by any of the state's arguments in the case. *Zobel v. Williams*, 457 U.S. 55, 65 (1982). After *Zobel*, a simpler payout scheme was enacted that allocated an equal amount to every resident but required a minimum two-year residency. That dividend structure was also challenged, though only at the superior court level. *Lindly v. Malone; Simianer v. State*, Civil Actions 3AN-90-2586 and 3AN-90-2821 Consolidated, Superior Court, Third Judicial District, July 18, 1990. The resulting oral court order rejected the two-year residency requirement but upheld a one-year residency requirement as "fairly and substantially related to the state's interest of establishing bona fide residency." Thus, the superior court held the one-

Unrelatedly, standing up this state wallet structure as an amendment to HB 152 would likely violate the single subject rule, as not every section of the bill would relate to taxes.

Would disbursements under the proposed structure be subject to federal income tax?

Yes. Under the constructive receipt doctrine, the federal government treats income as taxable when it is under the taxpayer's control.² Because the dividend in the state wallet is subject to the taxpayer's control, it would very likely still constitute income under the constructive receipt doctrine.

From conversations with your staff, I also understand you are interested in whether the dividend, if disbursed as a refundable tax credit, with no individual option to apply it

year residency requirement overcame the equal protection challenge. *Id.*, transcript at 6. *See also Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988) (holding that the dividend payments are made for a public purpose). The decision did not apply the privileges and immunities clause, noting that the test under the equal protection clause of the state constitution is more stringent than the test under the federal privileges and immunities clause. *Id.*, transcript at 7.

As to whether the court's decision in the *Lindly* case is good law, note that the decision was not appealed, so there is no Alaska Supreme Court decision in the case and no published opinion. Although the summary judgment order in the *Lindly* case could conceivably still have some persuasive power, the decision would probably not be considered a controlling precedent in any other court case relating to durational residency requirements. *McCoy v. State*, 59 P.3d 747, 755 (Alaska App. 2002) ("unpublished decisions are not 'precedent' in the sense that they control or restrict future judicial decision-making.").

Note that there have been other cases regarding the permanent fund dividend since *Lindy* which have given the Supreme Court an opportunity to strike down the program, and the court has not done so. For examples, *see Harrod v. State, Dep't of Revenue*, 255 P.3d 991 (Alaska 2011) and *Ross v. State, Dep't of Revenue*, 292 P.3d 906 (Alaska 2012).

² Where a taxpayer has an "unqualified, vested right to receive immediate payment," federal law requires a taxpayer to recognize the amount as income. *Jombo v. Comm'r*, 398 F.3d 661, 663 (D.C. Cir. 2005). *See also* 26 CFR 1.451-2 ("Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given."). Although the doctrine itself is about the timing of income for tax purposes, the regulation clearly evidences that the federal tax rules impute income to a taxpayer when that money is available to them.

against taxes,³ would be subject to federal income tax. Before beginning the discussion, it is important to acknowledge that the tax consequences of an action for any certain individual cannot be predicted with certainty; each individual may make decisions that affect the status and categorization of income and expenditures. Therefore, how one individual would treat a particular payment or benefit cannot be predicted with certainty.

In general, portions of a tax credit applied against state income taxes are not taxable income for purpose of the federal income taxes.⁴ However, portions of credits refunded after reducing state tax liability are generally treated as income for federal tax purposes.⁵ Of course, there are exceptions to this general rule, including if the refund constitutes a "return of capital" or payment of taxes,⁶ a payment for general welfare,⁷ or a disaster relief payment.⁸ Unless structured to meet one of these exceptions, a portion of a

³ The option to apply the dividend against state income taxes would very likely trigger federal income taxation of the dividend under the constructive receipt doctrine.

⁴ Tax credits that only reduce the amount of tax a taxpayer would otherwise owe are not taxable income because "the [taxpayer] has received no money or other 'income' within the meaning of the Internal Revenue Code." *Randall v. Loftsgaarden*, 478 U.S. 647, 657 (1986).; ". . . State tax credits [do not represent] a right to receive income from the state. Instead, they merely represent[] the right to reduce a taxpayer's State tax liability. It is without question that a government's decision to tax one taxpayer at a lower rate than another taxpayer is not income to the taxpayer who pays lower taxes. A lesser tax detriment to a taxpayer is not an accession to wealth and therefore does not give rise to income." *Tempel v. Comm'r*, 136 T.C. 341, 351 (2011), *aff'd sub nom. Esgar Corp. v. Comm'r*, 744 F.3d 648 (10th Cir. 2014).

⁵ Excess portions of tax credits that remain "after first reducing state-tax liability and that may be refunded [are] an accession to [a taxpayer's] wealth, and must be included in [] federal gross income [] for the year in which [the taxpayer] receive[s] the payment or [is] entitled to receive the payment unless an exclusion applies. And there is no exclusion from federal income tax simply because a payment comes from a state government." *Maines v. Comm'r*, 144 T.C. 123, 136 (2015).

⁶ *Id.* at 137 - 138. Whether this exclusion applies to a taxpayer might depend on whether the taxpayer itemizes deductions.

⁷ To qualify under the general welfare exclusion, "payments must (i) be made from a governmental fund, (ii) be for the promotion of the general welfare (that is, based on individual or family need), and (iii) not represent compensation for services." I.R.S. P.L.R. 201816004 (Apr. 20, 2018). Grants from welfare programs that don't require recipients to show need do not qualify for the general-welfare exclusion. *Bailey v. Commissioner*, 88 T.C. 1293, 1300 (1987).

⁸ Disaster relief payments are not included in income for federal income tax purposes under 26 U.S.C. 139, which defines a qualifying disaster relief payment as one that is

dividend refunded to an individual after it is applied as a tax credit would likely result in federal taxable income for the individual.⁹

What structural decisions would need to be made for drafting? If you decide to have the dividend structure proposed in your inquiry drafted, please consider the following questions as you begin drafting instructions: Which state agency or entity will be responsible for maintaining the individual accounts? Will there be an early withdrawal option, or will remaining funds be paid out a year from the initial dividend disbursement? Will the same payment methods be used (check and direct deposit)? Will the state pay interest on funds left in the account? Would you like to retain the pick-click-give program?

Would the idea benefit from additional expertise, e.g., expert tax advice, review? Federal tax law is complex. Our office gives general advice, and the situation of each taxpayer is different. If you would like to develop the idea proposed in your request and are seeking ways to avoid the dividend from being subject to federal income tax, you might consider seeking tax counsel. A bill could also direct the commissioner of revenue to submit a private letter ruling for guidance on a specific dividend disbursement structure. Such an opinion would provide more certainty on whether the dividend would constitute taxable income, but would not opine on any other legal or constitutional issues with the program.

A final note. You asked several broad questions about a hypothetical change to the dividend structure. In an effort to address your questions, this memorandum provides short summaries. If you would like more information about a particular conclusion in this memorandum, or if you would like to draft a bill or amendment creating the alternate structure you proposed, please be in touch.

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paid by a government to reimburse necessary personal expenses incurred as a result of a disaster or to reimburse expenses incurred for the repair or rehabilitation of a personal residence if damage is attributable to a qualified disaster.

⁹ It is possible that changing the structure of the dividend, and converting it into a tax credit only for qualified residents, could risk the legality of the program. A credit given to only state residents would likely be vulnerable to the same constitutional challenges as the dividend: challenges under the equal protections clauses under the state and federal constitutions and under the privileges and immunities clause of the federal constitution.